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8 *Attorneys for Defendant, Gayle A. Kern, Ltd. dba Kern & Associates, Ltd.*

9  
10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF NEVADA**

12 DEUTSCHE BANK NATIONAL TRUST  
13 COMPANY, FORMERLY KNOWN AS  
BANKERS TRUST COMPANY OF  
14 CALIFORNIA, N.A., AS TRUSTEE FOR  
AMERICAN HOME MORTGAGE ASSETS  
15 TRUST 2006-1,

16 Plaintiff,

17 vs.

18 THUNDER PROPERTIES INC.;  
EDGEWATER HOMEOWNERS  
19 ASSOCIATION; KERN & ASSOCIATES,  
LTD.; DOE INDIVIDUALS I through X,  
20 inclusive; and ROE CORPORATIONS XI  
through XX, inclusive,

21 Defendants.  
22

Case No.: 3:16-cv-00381-HDM-WGC

**STIPULATION AND ORDER FOR  
DISMISSAL WITHOUT PREJUDICE OF  
GAYLE A. KERN, LTD., dba KERN &  
ASSOCIATES, LTD.**

23 Plaintiff, Deutsche Bank National Trust Company, as Trustee for American Home  
24 Mortgage Assets Trust 2006-1, Mortgage-Backed Pass-Through Certificates, Series 2006-1,  
25 (hereinafter "Deutsche Bank"), by and through its attorneys of record, Dana Jonathon Nitz, Esq.  
26 and Yanxiong Li, Esq. of the law firm of Wright, Finlay & Zak, LLP, and Defendant Gayle A.  
27 Kern, Ltd., dba Kern & Associates, Ltd. ("K&A" and collectively with "Deutsche" as the  
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1 "Parties"), by and through its attorneys of record, Karen M. Ayarbe, Esq. of Kern & Associates,  
2 Ltd. hereby stipulate and agree as follows:

3 **WHEREAS** the above-captioned action concerns Defendant Edgewater Homeowners  
4 Association's (the "Association") NRS Chapter 116 nonjudicial foreclosure sale on or about June  
5 18, 2014 ("HOA Sale") involving certain real property located in Washoe County, Nevada,  
6 commonly known as 100 Riverhaven Place, Reno, Nevada 89509 ("Property");

7 **WHEREAS** Deutsche Bank filed its First Amended Complaint on September 27, 2017,  
8 alleging several causes of action against K&A in connection with the HOA Sale and the Property  
9 [ECF No. 16];

10 **WHEREAS** K&A has never claimed any interest in the Property;

11 **NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED** that the  
12 Complaint against Defendant K&A is hereby dismissed in its entirety without prejudice;

13 **IT IS FURTHER STIPULATED AND AGREED** that K&A shall not seek  
14 reconsideration of, appeal, or otherwise contest any final order, judgment or decree as to the  
15 validity and enforceability of the HOA Sale of the Property.

16 **IT IS FURTHER STIPULATED AND AGREED** as follows:

- 17 1. The period of time commencing June 16, 2016 (the "Effective Date") and ending on the  
18 Termination Date (as that term is defined in paragraph 4 below), shall not be included in  
19 determining the applicability of any statute of limitations, laches, or any other defense  
20 based on lapse of time in any action or proceeding brought by Deutsche Bank against  
21 K&A with respect to the HOA Sale, the Property, and the Amended Complaint. The  
22 Parties stipulate and agree, however, that K&A reserves any and all rights and defenses  
23 in connection with whether the improper naming of K&A in the Nevada Real Estate  
24 Division Claim No. 16-1107 ("ADR Claim No. 16-1107") constitutes sufficient notice  
25 for tolling of any applicable statute of limitations, laches, or other defense based on lapse  
26 of time, and whether any purported, attempted service on K&A of ADR Claim No. 16-  
27 1107 was proper.

- 1       2. Except as is set forth in the preceding paragraph, nothing in this Stipulation shall  
2       diminish or affect any defense available to any Party as of the date of this Stipulation, and  
3       this Stipulation shall not be deemed to revive any claim, remedy, and/or cause of action,  
4       legal or equitable, that is or was already barred as of the Effective Date, nor shall this  
5       Stipulation create any new claim, remedy, and/or cause of action, legal or equitable,  
6       against any Party hereto. Nothing in this Stipulation, or in the circumstances that gave  
7       rise to this Stipulation shall be construed as an acknowledgement by any Party that any  
8       claim, remedy, and/or cause of action, legal or equitable, has or has not been barred, or is  
9       about to be barred, by the statute of limitations, laches, or other defense based on the  
10      lapse of time;
- 11     3. This Stipulation shall not operate as an admission of liability by any Party. Neither this  
12      Stipulation nor any action taken pursuant to this Stipulation shall be offered or received  
13      in evidence in any action or proceeding as an admission of liability or wrongdoing by any  
14      Party;
- 15     4. Any Party may terminate this Stipulation on thirty (30) days written notice to counsel for  
16      the other Parties. The Termination Date shall be the first business day following thirty  
17      (30) days after a Party has provided written Notice of Termination pursuant to this  
18      paragraph;
- 19     5. This Stipulation comprises the entire agreement of the Parties with respect to the tolling  
20      of any statute of limitations. This Stipulation may be modified, amended, or  
21      supplemented only by a written instrument signed by all of the Parties;
- 22     6. Within thirty (30) days of appearance in this matter by the Association, K&A shall  
23      provide to the Association's defense counsel of record the Association's lien, collection  
24      and foreclosure files and/or documents, with respect to the real property located at 100  
25      Riverhaven Place, Reno, Nevada 89509 which are in K&A's possession concerning the  
26      June 18, 2014 NRS Chapter 116 assessment lien foreclosure sale on the Property for  
27      production by the Association's defense counsel in the course of discovery and in accord  
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1 with the Federal Rules of Civil Procedure, subject to any and all applicable objections  
2 and privileges.

3 7. Upon proper notice by Deutsche Bank in accord with the Federal Rules of Civil  
4 Procedure, K&A shall make available a knowledgeable witness for deposition limited to  
5 the Association's assessment lien foreclosure sale of the Property, and subject to any and  
6 all applicable objections and privileges. K&A shall be provided 30 days' notice of the  
7 deposition, and an opportunity to coordinate with Deutsche Bank's counsel, a mutually  
8 convenient time, date and location of such deposition. K&A reserves all rights, defenses,  
9 and remedies relative to the notice of deposition.

10 8. Except as set forth hereinabove, the Parties reserve any and all rights, privileges, and  
11 defenses under applicable law.

12 9. Nothing herein shall be construed as a waiver of the attorney client and/or work product  
13 privilege that exists among and between K&A and Edgewater Homeowners Association,  
14 or any other association client of K&A.

15 **IT IS FURTHER STIPULATED AND AGREED** that each side will bear its own  
16 attorney's fees and costs through the date of entry of the Court's Order granting this Stipulation.

17 **IT IS SO STIPULATED AND AGREED.**

18 **WHEREFORE**, the undersigned request this Court enter an Order granting the above  
19 Stipulation.

20 DATED this 8<sup>th</sup> day of November 2017.

DATED this 8<sup>th</sup> day of November 2017.

21 WRIGHT, FINLAY & ZAK, LLP

KERN & ASSOCIATES, LTD.

22 /s/ Yanxiong Li, Esq.

/s/ Karen M. Ayarbe, Esq.

23 Yanxiong Li, Esq.

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*Attorneys for Defendant, Gayle A. Kern, Ltd.,*

27 *National Trust Company, as Trustee for*

*dba Kern & Associates, Ltd.*

28 *American Home Mortgage Assets Trust*

*2006-1, Mortgage-Backed Pass-Through*

*Certificates, Series 2006-1*

**ORDER**

Based on the foregoing Stipulation by and between the Parties, and good cause appearing, ***IT IS SO ORDERED*** that the Complaint against Gayle A. Kern, Ltd., dba Kern & Associates, Ltd., is ***DISMISSED*** in its entirety, without prejudice, each Party to bear its own attorney's fees and costs incurred as of the date of this Order.

DATED this 13th day of November 2017.



UNITED STATES DISTRICT COURT JUDGE

**CERTIFICATE OF SERVICE**

Pursuant to the Fed. R. Civ. Proc. 5(b) and the United States District Court CM/ECF Electronic Filing Procedure IV(B), a true and correct copy of the foregoing ***STIPULATION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE OF GAYLE A. KERN, LTD., dba KERN & ASSOCIATES, LTD.*** was transmitted electronically through the Court's e-filing electronic system to the attorney(s) associated with this case.

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An Employee of Kern & Associates, Ltd.